

September 26, 2011

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUITElisabeth A. Shumaker
Clerk of Court

BIGLER JOBE STOUFFER, II,

Petitioner - Appellant,

v.

RANDALL G. WORKMAN, Warden,
Oklahoma State Penitentiary,

Respondent - Appellee.

No. 11-6193
(D.C. No. 5:07-CV-01312-C)
(W.D. Okla.)

ORDER

Before **KELLY, LUCERO**, and **TYMKOVICH**, Circuit Judges.

Petitioner Bigler Stouffer is represented by two court-appointed attorneys in his 28 U.S.C. § 2254 habeas action that is proceeding before the district court. In an April 29, 2011 Order, the district court denied Petitioner's *pro se* motion for substitute counsel. In a June 30, 2011 Order, the district court denied Petitioner's *pro se* motion to alter or amend the April 29 order. Petitioner Stouffer, proceeding *pro se*, appeals. We dismiss. The orders appealed are interlocutory.

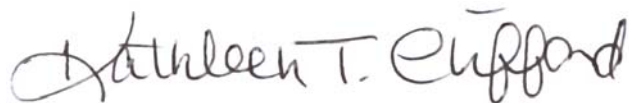
“Federal appellate jurisdiction generally depends on the existence of a decision by the District Court that ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’ ” *Federal Deposit Insurance Corp. v. McGlamery*, 74

F.3d 218, 221 (10th Cir. 1996) (quoting *Coopers & Lybrand v. Liversay*, 437 U.S. 463, 467 (1978)). In *Will v. Hallock*, 546 U.S. 345 (2006), the Supreme Court stressed that very few types of interlocutory orders can qualify as immediately appealable collateral orders. The “conditions are ‘stringent,’ and unless they are kept so, the underlying doctrine will overpower the substantial finality interests [28 U.S.C.] § 1291 is meant to further.” *Id.* at 349.

Upon review, this court concludes that the district court orders appealed do not constitute final or immediately appealable decisions under § 1291 or under any recognized exception to the final judgment rule. Because the April 29, 2011 Order and the June 30, 2011 Order are subject to reconsideration by the district court at any time during the § 2254 habeas action and because these orders are effectively reviewable on appeal after entry of final judgment, they are interlocutory and not immediately appealable.

The appeal is **DISMISSED** for lack of appellate jurisdiction.

Entered for the Court,
ELISABETH A. SHUMAKER, Clerk of Court

A handwritten signature in dark ink, appearing to read "Kathleen T. Clifford". The signature is fluid and cursive, with the first name "Kathleen" being more prominent than the last name "Clifford".

Kathleen T. Clifford
Attorney - Deputy Clerk